WHITEHORSE MINING INITIATIVE

FINANCE AND TAXATION ISSUE GROUP

FINAL REPORT

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FOREWORD

In September 1992, at the *49th Annual Mines Ministers Conference* in Whitehorse, Yukon, the Mining Association of Canada (MAC), on behalf of its member companies, as well as provincial and territorial mining associations/chambers, presented a brief reviewing the serious challenges facing the minerals and metals industry in Canada.

Recognizing the need for the mineral industry "to earn the trust of Canadians and to prove that it can operate in an environmentally sensitive and sustainable fashion", the MAC proposed the launch of a multi-stakeholder process to develop a common vision and strategic plan that would take the metals and minerals sector into the next century.

The proposal was endorsed by the Mines Ministers, and on March 30, 1993, the Whitehorse Mining Initiative (WMI) was launched at the annual Prospectors and Developers Association of Canada Convention. Other stakeholders who had been identified and who had agreed to participate include: federal, provincial and territorial governments; business, including the banking community; aboriginal groups; environmentalists; and labour. The immediate objective was to design a consultative process to address key issues affecting both the industry and the other stakeholders.

The objective of the WMI is to move toward a socially, economically and environmentally sustainable and prosperous mineral industry, underpinned by political and community consensus.

The WMI is spearheaded by a Leadership Council composed of government ministers and senior executives and officials from each of the sectors. The Leadership Council is coordinated and supported by a Working Group, also composed of representatives from each of the participating sectors, although at the senior working level. Four multi-stakeholder issue groups were formed to address the four main issue areas identified as being important to the mineral industry. Finally, a secretariat was created to play an overall coordinating and support role for all of these bodies. The secretariat is responsible for supporting and coordinating the issue groups and assisting them in the preparation of their final reports.

The four issue groups were created to address the following topics:

- land access
- environmental management and regulations
- finance and taxation
- workplace/workforce/community.

INTRODUCTION

The Finance and Taxation Issue Group comprised 26 individuals representing the complete cross section of stakeholder interests and resident in eight different provinces and territories across Canada.[1] All came with some interest, knowledge or experience in the subject of financing and taxation.

The Issue Group worked to identify the existence of serious impediments or significant opportunities with respect to the broad subject areas of:

- Capital Formation;
- The Cost of Doing Business: Taxes, Charges and Regulatory Compliance Costs;
- Mine Reclamation;
- Government Services;
- Aboriginal-Industry Business Relationships.

These subject areas were examined in the context of the overall goals of:

> *Identifying the means to develop a finance and taxation regime which is both stable and competitive for the Canadian mineral industry;*
>
> *Fostering our investment climate in order to maintain Canada's international competitiveness;*
>
> *Creating an atmosphere to optimize our financial, natural and human resources.*

A total of eight meetings were conducted in the period between July 31, 1993 and May 27, 1994. The first three meetings were used to establish the Issue Group's *modus operandi*; the specific subject areas to be addressed and the work plan to accomplish its agenda. Five meetings, each of 2-3 days' duration were devoted to addressing the major subject areas referred to above. The Issue Group chose to deal with each subject area as a "committee of the whole". The only exception to this occurred when a small, multi-stakeholder sub-committee was formed to advance discussions between meetings on the subject of mine reclamation. In some instances, the subject matter of one meeting was carried forward into subsequent meetings until discussion was finalized. For instance, discussions on Mine Reclamation (Chapter 3) spanned three sequential meetings.

Group decisions were achieved by consensus. The meeting minutes and the final report record not only consensus decisions but also where consensus was not achieved, including the opposing points of view. In practice, consensus was reached at the point in discussion where agreement or a common point of view had emerged that was shared by the majority of the Group and where no objections

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[1] For a list of the Issue Group members, please see Appendix 1.

were put forward to adopting it. *While the meeting minutes and the Final Report represent the consensus views of the members of the Issue Group, it should be understood that their parent organizations do not necessarily endorse these views.*

Due to the often highly technical and specialized nature of the subject matter, individuals from outside the Issue Group considered to have specific knowledge or experience in a particular area (resource people) were invited to participate in the presentations and discussions. These resource people, whose names, positions and affiliations are listed in Appendix 2, are in no way responsible for the consensus decisions made in this Report.

Each meeting was arranged by a small organizing unit composed of 5-10 Issue Group members. The make-up of the unit varied for each meeting in accordance with membership interests and expertise. The responsibility of each organizing unit was to decide on the content and format, and the selection of the resource people and background materials for that meeting.

Each chapter of this Report follows a standard format consisting of Issue Background, Principles, Objectives and Recommendations. The Issue Background statements are derived from the meeting minutes and reflect the subject matter as presented and discussed by the Issue Group. Their purpose is to provide a general context for the Principles, Objectives and Recommendations, and the factors that led to consensus. For the purposes of this Report, and following the suggestions of the WMI Secretariat, the following definitions apply:

Principle: A desirable situation which is not currently the norm;

Objective: What needs to happen to address the situation described in the principle;

Recommendation: Specific actions to accomplish the objectives.

ACKNOWLEDGEMENTS

Appreciation is extended to the individuals listed in Appendix 2 who participated in the meetings of the Finance and Taxation Issue Group as "resource people". Access to their knowledge and expertise contributed very significantly to the presentation and discussion of issues, and greatly assisted the Issue Group members to deal effectively with a rather complex and ambitious agenda in the relatively short period of time available.

There were many who assisted in the organization of the Finance and Taxation Issue Group meetings and activities, including the staff of the Prospectors and Developers Association of Canada (PDAC) and the staff of the Whitehorse Mining Initiative (WMI) Secretariat. Saley Lawton (PDAC) and Torsten Strom (WMI Secretariat) accurately and efficiently recorded minutes of the meetings and Torsten Strom assisted in the production of the final report. A special thanks is extended to Bob Parsons of Price Waterhouse and George Penna of Noranda Inc. who provided facilities for a number of the Issue Group meetings.

CHAPTER 1

FINANCING

A. Capital Formation

1. Background

Investment capital is the lifeblood of the mineral industry; it provides the means to fuel the exploration and development process and to replenish mineral reserves. The two primary sources of investment capital for the Canadian mineral industry are the equity markets (equity capital) and our lending institutions (debt capital).

Equity markets are an important source of capital for the mineral industry in general, but is effectively the **only** source of capital for the "junior" sector. Junior companies, which focus on the exploration process, possess few tangible assets and little or no source of income and, therefore, cannot avail themselves of debt financing.

The junior sector has played a vital role in the development of the Canadian mineral industry.[2] Today it continues to form a critical component of the exploration and development synergy which leads to the discovery of new economic deposits in Canada. Indeed, the very nature and existence of the junior sector is one of the factors which make the Canadian mineral industry unique and contributes significantly to this country's successful competition for exploration investment capital.

The availability of capital is also an important source of financing for the infrastructure development that accompanies mine activities in remote regions. Without that infrastructure, many projects which are otherwise economically viable cannot be developed.

Equity Financing

For the mineral industry, the process of raising capital in Canadian equity markets for Canadian exploration projects is encumbered by three significant factors: a) a lack of financial depth to the Canadian marketplace; b) increasingly restrictive policies and regulations of the Securities Commissions; and c) increasing uncertainty regarding security of mineral title.

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2 D.A. Cranstone, THE ROLES OF JUNIOR AND SENIOR COMPANIES IN MINERAL DISCOVERIES, 1947-82; Mining Sector, Natural Resources Canada (formerly Energy, Mines and Resources Canada), 1987.

The lack of depth of the Canadian equity markets has two aspects to it: a) there are inadequate sources of risk capital available for exploration projects in Canada; and b) once a discovery is made, it is difficult to raise the capital necessary for mine development. On one level, the inadequacy of the Canadian capital market is a fact of life that cannot be addressed in the context of the Whitehorse Mining Initiative. It is important to note, however, that this situation significantly limits the number of sources and mechanisms available to Canadian mining companies, in particular the junior sector, for the purpose of raising capital from Canadian capital markets, and is a factor which places the industry and Canada at a competitive disadvantage.

Canadian securities commissions and the stock exchanges perform the dual function of regulating the raising of risk capital on the one hand, and facilitating and encouraging it on the other. A balance between these two primary functions works to the benefit of both the investing public, the industry and the nation as a whole. In discharging these two functions, the role of the commissions is to ensure that there is adequate public disclosure of the risks involved in investing in securities offerings on the stock market. However, a steadily increasing emphasis on the regulatory function has occurred over the past 20 years in a continuing effort to raise the standards of protection to the public. The distinction between ensuring adequate disclosure and protecting the public against the risks inherent in investing in the mineral resource business has become blurred. This is exacerbated by the fact that all of the 12 securities commissions in Canada have developed their own policies and regulations, resulting in a regulatory regime which is complicated, inefficient, costly and restrictive. An individual or company wishing to raise equity capital in Canada is thus confronted with a discouragingly expensive and time-consuming process, particularly for the junior sector which has only limited resources available to meet the compliance requirements.

There is a need to re-establish a proper balance and pragmatism to our securities and stock-market regulations, such that the raising of equity capital is competitive and efficient and at the same time provides the investing public with the level of protection that is required.

The erosion of the security of mineral title in some Canadian provinces has increased the level of risk and acted to discourage investment in mineral exploration and development. Historically, the Canadian mineral industry has been able to explore, secure in the belief that if a mineable discovery was made, it could be developed and mined, provided that all regulatory requirements were met. In the last 15 years, however, the industry has experienced a decline in that security. This decline has been caused mainly by three factors: a) government decisions that contravene established regulatory processes for permitting and licensing projects, particularly in the advanced stages of exploration and development; b) a trend towards increasing litigation between mining interests; and c) Aboriginal land claims and self-government initiatives.

Debt Financing

The lending policies of Canadian banks specific to mining activities have become increasingly conservative and, as a result, this important source of capital has become less accessible to the mineral industry. The main factors contributing to this development appear to be the current exposure of banks to environmental liability and increasing uncertainty of title.

With a limited spread of 1-1.5%, there is relatively little profit motivation for banks to make loans to mining companies. Because of the limited spread, there are only a few banks that are willing to continue in this business, and they are only interested in projects of relatively low risk.

In considering a loan to a mining company, of paramount importance to the bank is protection against potential losses. Consequently, the banks look very carefully at environmental risk. If the banks have to take possession of the site, there is currently no limit to their exposure to environmental risk and liability. Obtaining environmental indemnity from the mine owner provides only limited protection for the bank. As well, the laws and regulations associated with environmental liability are in a state of flux. As such, it is very difficult for a bank to quantify the environmental risk associated with any project.

The risk of making loans to mining companies, and consequently the increasingly conservative approach being taken by most banks to extending debt financing for mineral projects, is further exacerbated by the uncertainty of mineral title described under equity financing.

Discussions on Lender Liability

The Issue Group made a concerted attempt to develop a consensus approach to addressing the lending problems arising from the current exposure of lenders to environmental liability. The banks' concerns focus on what amounts to an unlimited potential liability which includes responsibility for environmental damage caused by a borrower prior to the banks realizing on their security for the loan. The banks assert that they should be able to hold a security interest in the property of a borrower without fear of attracting environmental liability. Further, the banks believe that they should not be responsible for the environmental damage which they do not cause.

From the point of view of environmental protection, there was opposition expressed to placing limits on lender liability on the basis that those seeking returns should be responsible for risks and those placing capital to enable projects to proceed should make responsible choices as to where this money is going, or be held potentially liable for the consequences. Lenders should be "on the list" along with other potentially responsible parties and not be given a blanket exemption.

Although it was recognized that environmental liability is developing into a serious impediment restricting access to debt capital for mining projects in Canada, the Issue Group was not able to develop a consensus approach that would address these divergent points of view.

2. Principle

1. The mineral industry requires readily accessible investment capital from Canadian capital markets on a globally competitive basis.

3. Objectives

1. To make securities regulations and capital markets across Canada more coordinated and efficient to help re-establish their role of facilitating the raising of risk capital, particularly for the junior sector.

2. To decrease the uncertainty arising from environmental liability and erosion in mineral title, which is causing the lending policies of our banks to become increasingly conservative and complex, thus restricting access to debt capital for mining projects in Canada.

4. Recommendations

Equity Financing

1. Institute a process of reform for securities policies and regulations across the country which will lead to increased coordination of requirements, a higher level of efficiency in capital formation with particular consideration given to the needs of junior companies, and an appropriate level of protection of the investing public.

2. Personnel who are knowledgeable about the mineral industry and sensitive to its unique needs should hold positions of responsibility in Canada's securities commissions.

3. Regulations governing environmental protection and land access that affect mining should be established as soon as possible to reduce some of the uncertainty that affects investment in Canadian projects.

4. The issue of Aboriginal title should be settled as soon as possible, and in a fair and equitable manner.

5. Government and industry should work together to improve security of mineral title, including the possibility of a certification process.

6. Alternative methods of raising risk capital should be considered, such as:

   a) allowing more flexibility in how funds are used (e.g. "blind pool rule");
   b) funds that diversify risk;
   c) use of government-sponsored venture capital funds; and
   d) government exploration incentives.

Debt Capital

7. Given that environmental liability is a major factor contributing to the increasingly conservative lending policies of our banks, thus restricting access to debt financing, efforts should be made to find a solution to this situation which meets the needs of lenders and provides for environmental protection. (See discussion on pp. 3-4 of this Report.)

8. Receivers, receiver-managers, and trustees (including trustees acting in a fiduciary capacity) should be exempt from liability for pre-existing contamination and only be held liable to the extent of their fault or negligence in failing to take reasonable steps to prevent further contamination or to satisfactorily address ongoing environmental concerns at the mine site.

Infrastructure

9. To help facilitate the development of mineral deposits in Canada's remote regions, efforts should be made to generate cooperative and creative financing mechanisms (both equity and debt) for raising the large amounts of capital required for infrastructure development.

B. Exploration Investment Capital

1. Background

Over the past 12 years Canada has experienced a steady decline in known base-metal reserves, those commodities which contribute the largest proportion of economic benefits to this country from mining activities. In addition, investment in exploration has experienced a serious decline in recent years to the point where, in 1992, exploration spending was at one of the lowest levels seen in the past 23 years.[3] As well, the 1992 figure represents only the third time in the past 23 years when investment in domestic exploration by the major companies has dropped below the $400 million mark. It is also important to note that a significant proportion of the increased spending suggested by the preliminary 1993 figure is attributable to diamond exploration focused in the Northwest Territories.

Given the economic contribution of mining to Canada as a whole and, more directly, to the employment levels and local economies of approximately 150 communities in the remote area of this country, these trends are cause for alarm. This is particularly the case given the fact that, on average, it requires in the order of 10 years to find and develop a new economic deposit and put it into production.

The mineral industry and therefore resource-based countries compete in terms of investment capital and viable mineral properties. In this context, two factors which appear to have significance with respect to Canada's ability to compete for exploration capital are as follows:

* The competitive environment for the mineral industry has changed dramatically over the past 5 years or so, in that there are now many more countries competing for a limited, global pool of exploration and development funds. In this period of time, large amounts of investment capital have flowed to developing countries as a result of government reforms, attractive investment incentives and mineral potential.

* The investment world does not look as favourably on Canada as it used to because of a mounting negative perception that our governments have developed policy initiatives and regulatory regimes which pose serious impediments to discovery, development and profitable mining in this country.

The evidence would suggest that Canada is losing its former competitive edge in attracting exploration funds to be spent on domestic projects and replenishing our reserves.

Dealing with the main policy and regulatory impediments which are currently hampering Canada's domestic industry should help this country to regain its competitive position in the long

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[3] See the figure in Appendix 3 entitled Exploration Expenditures in Canada by Junior and Senior Companies, 1969-93.

term. However, this will take a number of years to effect and there is an urgent need to stimulate exploration investment and begin the process of replenishing our reserves now.

2. Principle

1. Canada must remain competitive in attracting exploration investment capital for domestic projects to maintain exploration levels, replenish reserves, and ensure continuing economic vitality and employment in Canada.

3. Objectives

1. To counteract the negative perceptions about Canada's investment climate as it relates to the mineral industry.

2. To re-establish Canada's ability to compete for exploration investment capital to the extent that reserves can be replenished and the industry can remain vital to the economy.

4. Recommendations

1. That as a near-term, temporary measure for offsetting the effects of the impediments, counteracting the negative perception of Canada's investment climate, and immediately stimulating exploration activity, the federal government introduce a national exploration incentive program in a fiscally responsible manner.

   Regardless of the mechanism chosen, measures should be implemented to minimize potential abuse and ensure that the funds raised/allocated are spent on the exploration for which they are intended.

2. Government and industry should design and implement a communications program focusing on the positive aspects of Canada as a place to invest.

3. That government and industry take steps to improve the exploration sector's geoscience knowledge base and technology in order to improve its ability to make significant discoveries.

CHAPTER 2

THE COST OF DOING BUSINESS: MINING TAXES, CHARGES AND REGULATORY COMPLIANCE COSTS

1. Background

In the normal course of its daily operations, a variety of taxes and charges are levied on the mineral industry and significant costs are associated with the process of complying with regulatory requirements. Because metal prices are fixed on international markets, these levies cannot be passed on to the consumer as they can for products manufactured or distributed by other sectors. As such, the industry has to absorb them and collectively they contribute to the overall "cost of doing business" in Canada which in turn can affect the mining sector's efforts to compete for investment capital.

The fiscal regime under which the Canadian mineral industry operates may be considered under the broad subheadings of: a) profit-based taxes, b) taxation system and process, c) non-profit taxes and charges, and d) regulatory compliance costs.

Profit-Based Taxes

A comparison of marginal tax rates for selected countries with established mining industries shows that many of the jurisdictions within Canada are among the highest in the study. Marginal tax rates alone, however, are poor indicators of an effective profit-based tax burden which may result in misleading conclusions about tax competitiveness. Marginal tax rates show only the tax burden on the incremental dollar of taxable income. They do not reflect the time-value of front-loaded deductions and certain tax credits or allowances. The effect of the timing of these deductions translates, on a net-present-value basis, into tax savings.

A comparison of effective income tax rates for those same countries shows that some of Canada's jurisdictions are, in general, competitive.[4] Effective income-tax rates do not therefore represent a significant deterrent to investment in the Canadian mineral industry. Nevertheless, there is a significant problem in that the perception exists that income tax rates are too high due to the focus on marginal tax rates, with no account taken for the timing of the deductions. In addition, the complexity and variety of the various provincial mining duties/taxes further reinforces the perception that tax rates are too high.

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[4] See *A Comparison of Average Effective Tax Rates for Selected Mining Jurisdictions*, A Government/Industry Task Force on the Canadian Mineral Investment Climate (September 1993), Open File Background Study.

Taxation System and Process

If there is a problem in the area of taxation system and process, it is that Canada's tax system is very complex, a condition that may act to deter foreign investors. This situation arises from the fact that there are 13 jurisdictions in Canada, each with its own tax laws and policies many of which are developed and implemented without a high degree of coordination.

Non-Profit Taxes, Levies and Charges

In recent years tax burdens in Canada have been shifting from profit to non-profit based mechanisms. In addition, numerous levies and charges are imposed, all of which contribute to the cost of doing business in Canada. The different types of non-profit taxes, levies and charges may be discussed using the following typology:

a) Non-Mandated User Fees: User fees normally implemented to recover costs for the provision of particular products or services which are important but optional to the industry (e.g. access to information).

b) Mandated User Fees: User fees for particular products or services which are required of the industry (e.g. licensing and permitting fees)

c) Program-Specific Government-Mandated Taxes and Charges: Charges levied to pay for specific programs or services (e.g. Worker's Compensation, Unemployment Insurance, Employer Health Tax).

d) Non-Profit Taxes: Government-mandated taxes not related to any specific service or product and directed to general revenues (e.g. Capital Tax).

e) Royalties: Government-mandated payments levied on production by the Crown in its capacity as owner/lessor of the resource.

Regulatory Compliance Costs

In the last 10 years, there has been a significant increase in the number and complexity of regulations imposed on the mineral industry in Canada. This trend has affected every aspect of mineral industry activity, including financing, exploration, development, mining and mine closure. Since there is a cost associated with the process of complying with regulatory procedures and requirements, the burgeoning regulatory regime has contributed significantly to the steadily increasing cost of doing business.

Summary

Although each individual tax, levy, charge and regulatory cost is imposed for its own justifiable reason, a large number of different agencies are involved and they have been imposed without regard to their cumulative impact on the industry. While their total impact is only now being subject to detailed analysis, preliminary studies indicate that collectively they have been increasing at significant rates in recent years and industry has had to absorb them as a steadily increasing cost of doing business in Canada.

The preliminary evidence suggests that the cumulative impact of non-profit taxes, levies, charges and regulatory compliance costs have reached a point of becoming a prohibitive burden on existing mining operations. Furthermore, they are also contributing to the difficulty of finding new deposits in Canada which will yield an attractive return on investment; that is, increasing the cost of doing business raises the threshold grade required to make a new deposit economically viable. It is another way in which the competitiveness of Canada's investment climate is being eroded.

2. Principle

1. Our fiscal and regulatory regimes, which affect the cost to industry of finding and developing new mineral deposits in Canada, should be as simple as possible, pragmatic and fair, with a positive influence on Canada's mineral competitiveness.

3. Objectives

1. To establish a tax regime that is, and is seen to be, simple, pragmatic and fair, and that maintains a balance between the revenue needs of government and the industry's need for a return on investment, with an overall greater reliance on profit-based taxes as opposed to non-profit-related taxes and charges.

2. To establish a regulatory regime that is both effective and efficient in maintaining prescribed standards of activities and operations, and in minimizing the cost of complying with the regulatory requirements.

4. Recommendations

General

1. Place priority on the completion of ongoing studies to determine the levels and impact of non-profit taxes and charges and mandated regulatory costs on the Canadian mineral industry and on its ability

to attract investment for domestic projects.

2. Governments and industry should work together to improve the understanding of domestic and foreign investors of Canada's current system of mineral industry taxation.

3. Governments should institute a process to simplify Canada's mineral taxation system through the increased coordination and harmonization of federal and provincial tax policies.

Profit-Based Taxes

4. Initiate an education/information program, aimed at investors, governments and industry, to counter the negative perception that income-tax rates are too high and represent an impediment to the mineral investment climate in Canada.

Non-Profit Taxes, Levies and Charges

5. The current levels and any future increases in the rates of User Fee-Based Charges should be justified on the basis of the costs of the particular service to which the charge relates and what the market can bear without discouraging activity.

6. The current levels and future increases of Program-Specific Government-Mandated Taxes and Charges, such as unemployment insurance premiums and worker's compensation premiums, should be justified on the basis of the cost-requirement needs of these particular programs.

7. Capital taxes are a financial drain on the industry, particularly the junior sector, and should be eliminated completely.

8. Governments should maintain balanced and stable royalty regimes; any future changes should be established through a measured, consultative, and predictable process with appropriate phase-in periods.

Regulatory Compliance Costs

9. Regulatory requirements should be designed for the purpose of achieving a prescribed standard of practice on the basis of compliance costs which are as lean and efficient as possible.

10. Governments should set compliance standards, on the basis of scientific and other generally recognized empirical methods, but should work with the industry to determine the most efficient methods of achieving those standards and, if necessary, the type of monitoring required.

11. Governments and other stakeholders should examine the viability of "economic instruments" as possible vehicles to complement the current "command and control" regulatory approach to determine if they are applicable and will increase efficiency.

12. It should be clear in federal/provincial/territorial income-tax and mining-tax legislation that environmental costs, including contributions to a reclamation fund, are deductible.

CHAPTER 3

MINE RECLAMATION

The subject of mine reclamation is subdivided into two parts as it applies to: a) current and future mines and b) old sites; that is sites where mines have ceased their operations, in most cases for periods of more than a decade ago. This subdivision is in part a recognition of the fact that the laws and standards governing mine closure and reclamation have evolved rather dramatically in recent years and legislation currently being considered or developed applies primarily to currently operating mines and mines yet to be developed. As well, the issues arising with respect to current and future mines as compared to those related to old sites are distinct in important ways.

A. Current and Future Mines

1. Background

The concepts and standards underlying mine closure and reclamation today are much more demanding and stringent than they were just a few years ago and reflect changing public priorities and environmental imperatives. The new requirements represent a very considerable additional cost of doing business that must be absorbed by industry in Canada. It is applied as a prerequisite to the development of new mines, the reactivation of old mines and as a major new addition in the cost equation for currently operating mines. At present there are no international standards for mine reclamation and the Canadian standards may be among the highest in the world.

The Canadian industry fully accepts the concept and responsibility of mine reclamation. At issue is the development of an effective and efficient approach to the funding of mine reclamation and a reasonable tax treatment of those funds that enables the environmental objectives to be achieved and also facilitates and encourages the industry to comply with the requirements.

There was unanimous recognition by the Issue Group of the necessity of mine reclamation as a means of protecting the environment and public health and welfare and as a means of minimizing the environmental damage caused by current and future mining activities. From the point of view of environmental protection, important elements to funding reclamation for current and future mines which were expressed include:

- adherence to the polluter-pays principle;
- internalization of environmental costs (i.e. as a cost of doing business, not a cost to the public purse);
- involvement of the public in defining reclamation and perpetual care requirements;
- certainty of adequate funds provided by companies/industry to cover costs of reclamation

and perpetual care;
- release from perpetual care being subject to the creation of a risk-based assurance fund.

From a development point of view, the important elements to funding reclamation for current and future mines which were expressed include:

- a regulatory regime which is stable over time and consistent between jurisdictions;
- a cost structure which, on the one hand, enables environmental objectives to be met but, on the other, is as lean and efficient as possible;
- responsibility for reclamation of a mine site to be that of the owner of the mine;
- flexibility of financing through a variety of funding mechanisms;
- negotiability with government of funding means and timing of payments on a project-specific basis;
- special consideration afforded to currently operating mines with no reclamation programs in place;
- use of the tax regime to facilitate the financing of reclamation funds and to maximize the quality of reclamation.

The Issue Group achieved a significant degree of agreement on the details of an approach to mine reclamation as it applies to current and future mines which includes all of the above "important elements" presented from the environment and development points of view. They have been incorporated into the following Principles, Objectives and Recommendations.

2. Principles

1. In order to have a sustainable mineral industry in Canada over the long term, current and future mine sites need to be managed and operated in an environmentally sound manner and fully reclaimed after operations cease, and progressively where possible.

2. For current and future mines, Canada's mineral industry, on a company-by-company basis, accepts the primary financial responsibility for preventing and cleaning up environmental disturbances that its activities cause.

3. Objectives

1. To provide a fiscal regime for mine reclamation financing which ensures that: a) adequate funds are available for full reclamation; b) that the mechanisms of funding and timing of payments meet the criteria of reasonableness and flexibility; and c) that the industry's cost structure is as lean and efficient as possible.

2. To ensure that governments maintain balanced and stable regulatory frameworks for mine reclamation funding that are stable over time, consistent across jurisdictions, and based on reasonable standards that meet the needs of society. Any changes should be established through a measured, consultative and predictable process with appropriate phase-in periods.

4. Recommendations

1. Flexibility in the financing of reclamation should be provided to companies through the availability of a variety of funding options, as long as those options are secured by a financial vehicle or mechanism acceptable to the appropriate regulatory authorities.

2. The mechanisms for mine reclamation financing and the timing of payments should be the subject of a negotiating process between the proponent and the regulatory authorities on a project-specific basis.

3. For all new mines, the financial security available at any point must be able to cover the reclamation liability actually incurred to that point in the life of the mine.

4. Where a mine is already operating and the mine site does not currently have a mine-reclamation funding scheme in place, special consideration should be given to the timing of financing if a source of funds for reclamation is not readily available to the company operating the mine.

5. To facilitate paying for reclamation through the use of a mandated fund, governments should consider the following options:

   a) after-tax income of the fund would not be taxed on exit from that fund;
   b) income of the fund would be "flowed through" to the company and taxed as regular income; and
   c) income of the fund would be sheltered from current taxation.

6. A company should be granted a sign-off or release by the regulatory authorities from further responsibility for perpetual care for the mine site, on the condition that:

a) the company has completed all requirements set out in the reclamation plan in force at the time the mine operation was shut down;

b) an acceptable level of financial assurance has been posted to meet the foreseeable longer-term reclamation requirements of the particular mine site; and

c) a risk-based financial assurance fund is put in place.

To enable sign-off, a risk-based financial assurance fund should be created to finance the costs of cleaning up unforeseen environmental disturbances relating to mines sites which have been granted a sign-off. Governments and industry, as well as other interested stakeholders, should explore options for financing such a fund, including:

a) an insurance-industry-driven funding mechanism;
b) a non-tax-based sectoral fund;
c) a sectoral fund financed out of tax revenues;
d) a risk premium attached to the sign-off requirements which could be pooled by governments.

7. A multi-sector public liaison committee should have input on the nature and extent of reclamation required. This process should be timely and cost-efficient to avoid undue delays in the approval process for the reclamation plan.

B. Old Mine Sites

1. Background

Past mining operations have left numerous old facilities scattered across the country some of which may represent immediate health and environmental hazards. In many cases the mining property has had a complex history of ownership during and subsequent to the cessation of operations. In some cases, the original mining company no longer exists and in others the sites have been abandoned. The identification of an owner does not always guarantee the availability of funds to reclaim the site.

Although the former operators of these mines complied with the laws of the day, the conditions of many of these old and abandoned sites are unacceptable by today's environmental standards. At issue is the question of how to deal with the reclamation of old mine sites in terms of liability and responsibility of funding.

From the point of view of environmental protection, important criteria relating to the issue of reclaiming old sites which were expressed include:

- the adequacy of funds to cover clean-up, while minimizing public expenditures;
- public involvement in determining priority sites and the nature and extent of the clean-up;
- adherence to the polluter-pays principle;
- the application of joint and several liability;
- support for an industry sectoral fund, with public assistance acceptable; and
- support for retrospective liability.

From a development point of view, important criteria relating to the issue of reclaiming old sites which were expressed include:

- the inclusion of governments in those named as responsible for causing past environmental disturbances, since governments licensed and permitted these past operations, developed the statutes and regulations which applied to them, and benefited from their operations;
- that governments should be solely responsible for those sites in which title has been returned to the Crown;
- the rejection of the "deep pockets" approach in establishing liability;
- the rejection of joint and several liability in assigning responsibility for funding.

Discussions on Joint and Several Liability

The Issue Group's success in developing a consensus approach to the subject of reclaiming old mine sites was limited, with agreement reached only in the specific case of orphaned sites (see Recommendation No. 2). Further progress on the subject was not possible due to fundamental differences in point of view, centred on the application of joint and several liability as a method of identifying responsible parties.

With regard to the environmental imperative, the view was expressed that the use of joint and several liability is crucial for the purpose of achieving efficient clean-up with minimum delays and minimizing the use of the public purse. In this situation, as large a net as possible is cast, liability assigned, payment made by those found responsible, and then the responsible parties can make use of the courts to defend their positions.

From a development perspective, the view was expressed that the application of joint and several liability is a "deep pockets" approach which can result in unfair allocation of responsibility. Industry representatives presented the position that because governments licensed and permitted these past operations, developed the statutes and recommendations which applied to them, and benefited economically from their operations, they should also share in the responsibility for reclaiming the old sites produced.

At one point in the discussion, the Issue Group contemplated the use of a fund to help finance reclamation of old sites and so-called "orphan shares". Industry representatives were prepared to consider this approach if presented as an *alternative* to the use of joint and several liability, a condition, however, that was not acceptable to the environmental representatives.

Significant efforts were made over a number of meetings to try and resolve these differing points of view but to no avail.

2. Principle

1. Old mine sites must be reclaimed beginning with those posing the greatest health or environmental risk.

3. Objectives

1. Establish a funding mechanism to reclaim old mine sites concentrating first on those which pose the greatest health and environmental risk.

2. Establish an accepted means for applying liability and responsibility for funding.

4. Recommendations

1. Efforts should continue in developing a method of identifying responsible parties and assigning liability for reclamation of old mine sites which addresses the concerns of all stakeholders. (See discussion on pp. 19-20 of this Report.)

2. A fund generated from a combination of government consolidated revenues, taxes on industry, and taxes on the consumer should be used to pay for the clean-up of "orphaned" mine sites; that is, mine sites where no responsible parties can be identified.

3. Governments should encourage the exploration of old sites through a regulatory framework which explicitly limits a prospector's or company's environmental liability to the clean-up of environmental disturbances which they have caused.

4. Individuals or corporations in a position to assist voluntarily in the financing of the clean-up of an orphaned mine site should be encouraged to do so since much could be gained for the industry as a whole by such activity in terms of public image. These

volunteers should be exempt from liability for any costs of clean-up, except to the extent that they add to those costs through negligence.

CHAPTER 4

GOVERNMENT SERVICES

1. Background

Provincial, territorial and federal governments all have taxpayer-supported mines and minerals departments. They provide a variety of services to the mineral industry, government agencies, and other clients including: geological survey activities, administering land tenure, managing statistics, setting policy, attracting investment, promoting export of commodities and services, and conducting research and development in all phases of the mining cycle.

In a very real sense, government and industry are partners in the development of mineral resources. Government agencies provide products and services and the industry provides investment capital for exploration and development, as well as the revenues generated by the resource itself. Significantly, the geo-scientific knowledge and information data base that is generated through this partnership is of high quality in a global sense and has been one of the factors contributing to the strong competitive advantage Canada developed over the years in attracting exploration investment.

Recently the role of mines and minerals departments has moved beyond the boundaries of mineral resources. In this respect, increasing amounts of their time and energy are being directed towards the application of geo-scientific information and expertise to land-use planning and environmental imperatives.

At issue is the fact that government budgets are being significantly reduced and there are serious questions arising as to the ability of mining and mineral departments to continue to deliver the considerable array of services that they have provided in the past. The mineral industry is particularly concerned about the continued provision of "essential services"[5] which include access to information and expertise and the maintenance of high standards of this knowledge and expertise.

Declining budgets have motivated mines and minerals departments to consider charging for certain services for cost-recovery purposes and to introduce new products and services from

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[5] Essential services are defined as those services which have proven to be of fundamental importance to the industry, including access to information and expertise. The Issue Group did not think that a more detailed definition would be appropriate because what is considered as "essential" will most likely vary from jurisdiction to jurisdiction and over time. As stated in Recommendation No. 4, efforts should be made to define "essential services" in each jurisdiction.

which they could derive non-tax revenues. In both cases, the revenues should accrue directly to the department rather than the government's general account. There is a concern within industry that these initiatives could lead to a situation where government services become an additional, significant cost for it to bear, or competes unfairly with the private sector for the same market.

An appropriate balance must be found between providing a service to an industry as an incentive for that industry to generate wealth within the jurisdiction and charging that industry for certain services at a level which enables the department to recover costs and augment budgets.

2. Principle

1. In recognition of the wealth-generating activity supported by mines and minerals departments, the means must be found to continue the provision of essential government services and products while maintaining the current standards of quality and expertise.

3. Objectives

1. To find the means to continue supplying essential government services and products through a combination of:

    a) provision of adequate base budgets;
    b) methods of supplementing base budgets, such as cost recovery and non-tax revenue earning activities;
    c) increased efficiency;
    d) cost-saving measures.

2. To identify and implement commercial activities, the revenues of which could be used by mines and minerals departments to help offset budget cuts, provided that:

    a) they are not applied to or negatively affect the provision of essential services and products;
    b) these activities do not compete unfairly with existing private-sector services of a similar nature;
    c) the charges applied do not discourage industry investment and activity.

4. Recommendations

1. In determining budgetary allocations to mines and minerals departments, governments should take into consideration the economic contribution of the mineral industry.

2. Efforts should be made to eliminate unnecessary duplication of services, products, or requirements which exist within individual governments and also between provincial and federal government departments.

3. Measures should be introduced to cut costs and increase efficiency, including cooperative schemes and partnerships.

4. In each jurisdiction, a task force, including government and industry representatives, should be formed for the purpose of defining essential products and services appropriate for current and future needs of the industry and other clients and possibly to prioritize them.

5. Efforts should be made to explore revenue-earning activities which accrue funds directly to the mining department, including cost recovery and non-tax revenue sources.

6. Cost recovery and non-tax revenue-earning activities should not be applied in such a manner as to jeopardize the provision of essential services (including access to government personnel and information products and services) which have acted as a competitive advantage to Canada in its ability to attract industry investment and activity.

CHAPTER 5

ABORIGINAL-INDUSTRY BUSINESS RELATIONSHIPS

1. Background

The settlement of comprehensive native land claims, although time-consuming and complex, will provide significant impetus for the establishment of positive business relationships between industry and Aboriginal peoples.[6] The Inuit land claim covering a large portion of the eastern Arctic, referred to as Nunavut, is a leading case in point.

However, the development of positive business relationships between Aboriginal peoples across Canada and the Canadian mineral industry remains encumbered by a number of factors including: a) poor communications and misunderstandings on both sides; b) uncertainty concerning security of title and the rules governing operations on reserves, traditional lands and areas affected by land claims; and c) a general lack of financing mechanisms which would facilitate the funding of Aboriginal mineral development ventures and d) legislative impediments, in particular the *Indian Act*, which restrict the ability of band councils to enter into business agreements.

As a result of this, Aboriginal peoples and the mineral industry have not been able to enter into true partnership arrangements. Instead, business dealings, for the most part, have been restricted to the level of royalty pay-outs and short-term labour intensive jobs in exchange for the right to extract minerals from aboriginally owned lands.

Aboriginal communities are now seeking a more fundamental level of involvement in the business of mining including equity participation, joint ventures, profit sharing and jobs which create marketable skills.

Since Aboriginal communities will be significantly increasing their land base in the coming years and will have greater access to financing mechanisms, it is essential for Aboriginal communities and the mineral industry to develop mutually beneficial business relationships in order to realize the full potential of the opportunities which will be created.

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[6] The terms "Aboriginal peoples" and "Aboriginal communities" are used interchangeably for the purposes of this chapter.

2. Principles

A. Legislation and Policies

1. Aboriginal peoples and communities should have the opportunity to fully participate in mineral development in Canada.

2. Legislation, policies and agreements should encourage growth in Aboriginal-industry business relationships and the financing of mineral projects on reserves.

B. Financing

3. A fiscal regime should exist which is conducive to mineral industry activities by Aboriginal peoples.

C. Business Relationships

4. Productive business relationships between Aboriginal peoples and the mineral industry will depend on mutual understanding and open lines of communication.

3. Objectives

A. Legislation and Policies

1. To review the *Indian Act* and other relevant federal and provincial legislation, their policies and regulations, and federal/provincial agreements, with a view to addressing any impediments which exist to full participation of Aboriginal people in mineral development and to further Aboriginal-mineral industry business relations.

B. Financing

2. To create a fiscal regime which is effective in furthering Aboriginal interests in the mineral industry, and which enables Aboriginal peoples to establish profitable business relationships with the mineral industry.

C. Business Relationships

3. To find the means to improve communications and induce a higher level of understanding between Aboriginal people and the mineral

industry as a fundamental step towards creating workable business relations.

4. Recommendations

A. Legislation and Policies

1. The *Indian Act* creates impediments to the financing of on-reserve projects, due to: a) the uncertainty it creates for industry about security of presence (tenancy), and access to and disposition of resources; and b) the complications it creates for communities with regard to the lack of equity and collateral. An analysis of the *Act*, its policies and regulations should be conducted to determine the best direction to take in order to address these impediments, including:

    a) amending the *Indian Act* and the *Indian Mining Regulations*;
    b) use of sections 53-60 of the *Act* which allow Aboriginal people to exercise greater control and management over lands and resources in a reserve;
    c) use of section 58(4)(b) under which the Minister may, without an absolute surrender or a designation, and with the consent of the band council, dispose of non-metallic substances on or under the reserve lands and issue temporary permits for the taking of such substances. In addition, this section should be expanded to include metallic minerals;
    d) modifications to the surrender/designation provisions in the *Act*;
    e) clarifying/modifying/amending section 28(2) ensuring greater ease of resource access and disposition.

2. Where a private party has legal title to on-reserve minerals, there needs to be clarification with regard to the provinces as to which legislation (provincial or federal) will apply to the mineral development and exploitation, and how income will be apportioned.

3. There should be clarification as to which of federal or provincial legislation applies with respect to the administration of mineral rights of unsold surrendered lands and the mineral rights reserved for the band upon sale of surrendered reserve lands.

4. A clear set of rules should be developed governing activities, taxation, revenue sharing, First Nation participation, environment and operations on reserve lands to address the current disincentives to on-reserve exploration and development.

5. All provinces should blanket-waive their share of mineral resource revenues and proceeds which they are currently entitled to under the Federal/Provincial Agreements, thereby removing a disincentive for bands to develop resources on reserves.

B. Financing

6. Aboriginal peoples should be encouraged to use "Aboriginal development organizations" in their efforts to raise their profile with the mineral industry, increase credibility, and attract investment for mineral development.

7. That governments support new mechanisms for financing Aboriginal mineral ventures such as:

   a) use of federal and provincial government guarantee instruments (e.g., First People's Trust);
   b) labour-sponsored venture capital funds.

8. As an immediate, short-term measure, government fiscal incentives should be created to help overcome the impediments which act to discourage the formation of joint ventures between Aboriginal people and industry.

9. The mandate of the Canadian Aboriginal Economic Development Strategy (CAEDS) program should explicitly include funding for mineral ventures.

10. Mechanisms for funding baseline studies on Aboriginal lands should be examined, including:

    a) negotiating with the private sector to conduct exploration programs and share the geo-scientific information thus derived;
    b) negotiating with government-funded geological surveys to conduct systematic studies of lands owned or controlled by Aboriginal people.

11. The tax advantages involved in doing joint ventures on reserves should be clarified and communicated to the mineral industry.

C. Business Relationships

12. Aboriginal peoples should be encouraged to use "Aboriginal development organizations" in their efforts to raise their profile with the mineral industry, increase credibility, and attract investment for mineral development.

13. Aboriginal people and organizations should be encouraged to actively promote their mineral prospects and interests to mining companies. Similarly, the mineral industry should be encouraged to include Aboriginal-owned lands in its exploration efforts and to seek agreements with respect to attractive prospects.

14. Methods need to be developed to overcome the barriers which inhibit communications between Aboriginal people and the mineral industry which arise from culture differences, lack of awareness, unfamiliarity with process, misperceptions, and fears. Some methods worth considering include:

    a) Community presentations by mining companies;
    b) Formation of Aboriginal mineral development organizations;
    c) Industry-Aboriginal business conventions;
    d) Aboriginal participation at mining conventions and provincial/territorial annual reviews of activities;
    e) Industry presence at Aboriginal conventions.

APPENDIX 1

WMI Finance and Taxation Issue Group Members

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[7] Mr Pereboom was assigned to the Issue Group by the United Steelworkers of America.

APPENDIX 2

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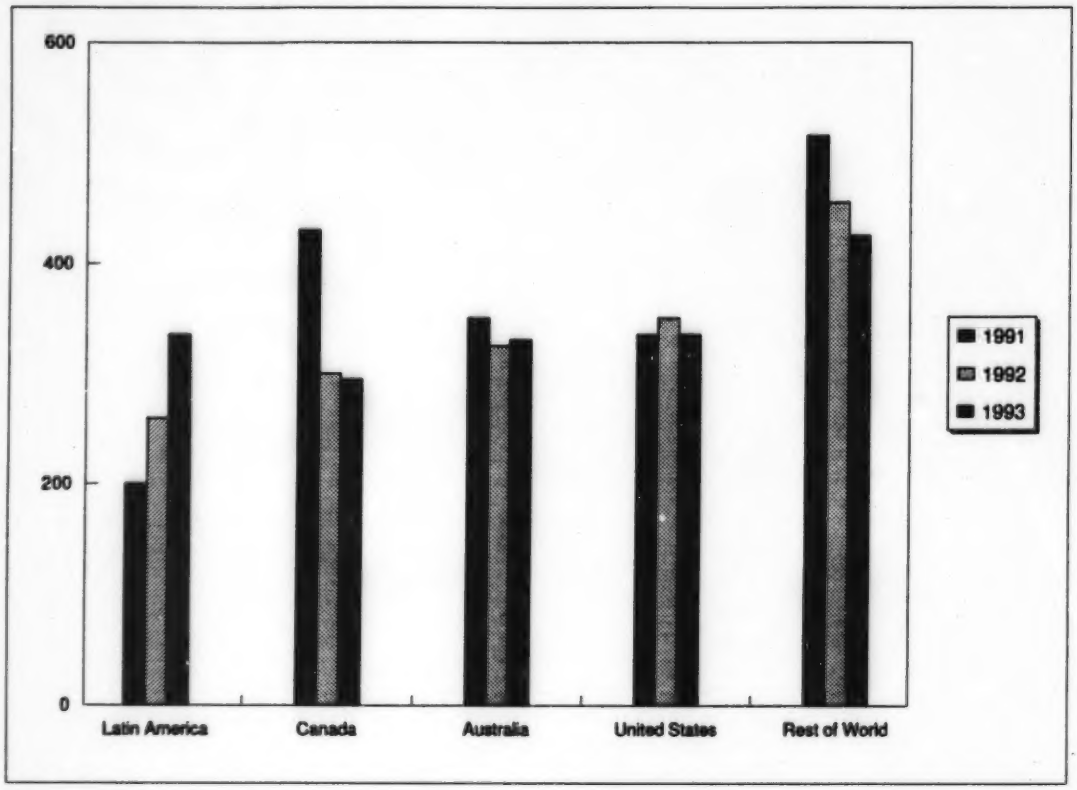
Appendix 3

Exploration Statistics

TARGET OF EXPENDITURES
WORLDWIDE EXPLORATION EXPENDITURES
1991 - 1993

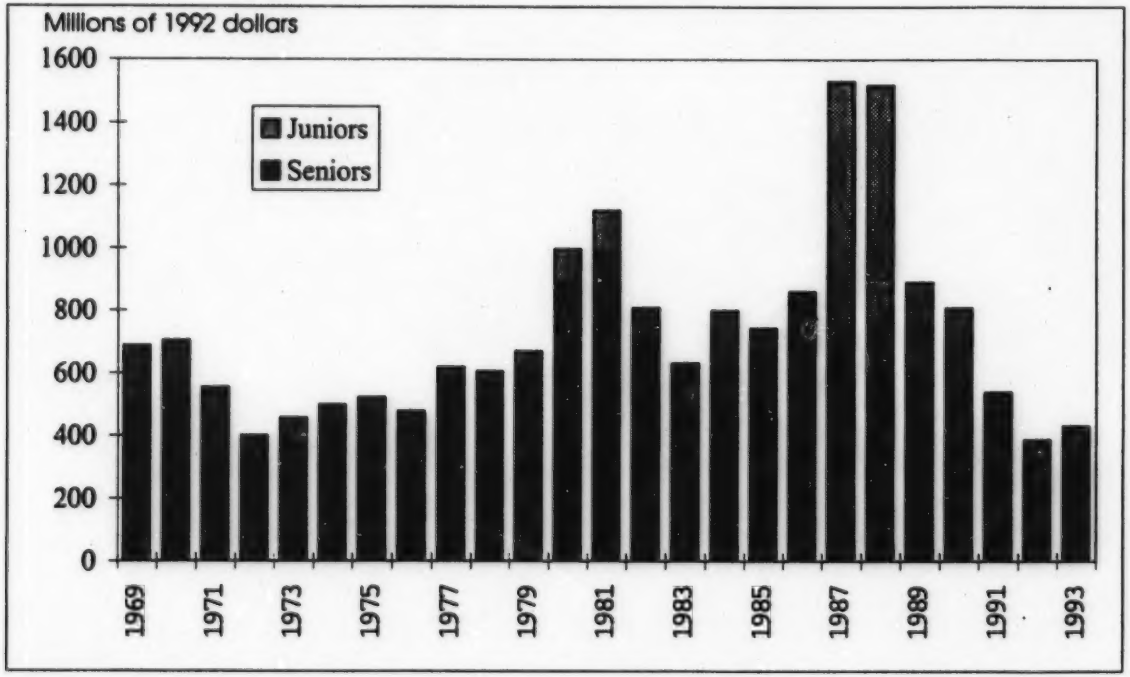
1991 Survey: 159 companies
1992 Survey: 154 companies
1993 Survey: 141 companies



Excludes exploration for iron ore, aluminum, coal, oil and gas, most exploration for industrial minerals and exploration by most companies with exploration budgets less than $US 1 million. Surveys are said to cover at least 80% of all worldwide spending on exploration for nonferrous metals.

Source: Mining Sector, Natural Resources Canada. Based on data from Metals Economics Group (MEG), and used with permission.

EXPLORATION EXPENDITURES IN CANADA
BY JUNIOR AND SENIOR COMPANIES
1969-93



! Total expenditures for 1975 to 1981 are possibly overstated by an average of about 17% relative to earlier and later years because of changes to the methodology used by Statistics Canada over the years. The 1993 figures are preliminary; Final figures for 1993 will likely be available by the end of 1994. Source: Mining Sector, Natural Resources Canada and Federal-Provincial Survey of Mining and Exploration Companies.